

1 John J. Lormon (Bar No. 074720)
2 PROCOPIO, CORY, HARGREAVES
3 & SAVITCH LLP
4 530 B Street, Suite 2100
5 San Diego, California 92101
6 Telephone: (619) 515-3217
7 Facsimile: (619) 744-5417
8 E-mail: jjl@procopio.com
9 Attorneys for Petitioner,
10 CITY OF SAN MARCOS
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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the City of San Marcos

SWRCB/OCC File _____

**PETITION OF SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD
INVESTIGATIVE ORDER NO. R9-2008-
0018**

1. Name, address, telephone number and email address (if available) of the petitioner.

City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069-2918

Correspondence or questions regarding this petition should be directed to John Lormon at the address, email address, or telephone number listed above.

2. The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.

The "specific action or inaction of the Regional Board" for which the City requests State Board review is the Regional's Board's issuance to the City of the Investigative Order No. R9-2008-0018 ("IO") attached as Exhibit A.

3. The date on which the regional board acted or refused to act or on which the regional board was requested to act.

The IO is dated September 24, 2008.

4. **A full and complete statement of the reasons the action or failure to act was inappropriate.**

The issuance of the IO by the Regional Board to the City was inappropriate because the City is not a “discharger” subject to the requirements of Water Code Sections 13267 and 13383, and the City is not and never has been the owner of the property where the alleged discharge occurred. The IO also does not seek “technical” information as is authorized by Water Code Sections 13267 and 13383. These issues are discussed fully in the Memorandum of Points and Authorities below.

5. The manner in which the petitioner is aggrieved.

The City has been aggrieved because the City is not a “discharger,” making issuance of the IO to the City improper.

6. The specific action by the state or regional board which petitioner requests.

The City requests that, pursuant to 23 C.C.R. Section 2052(a)(2)(C), the State Board direct the Regional Board to withdraw the IO because the City is not a discharger.

7. A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing where appropriate.

See Memorandum of Points and Authorities below.

8. A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.

A copy of this Petition has been provided to the Regional Board.

9. **A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why petitioner was not required or was unable to raise these substantive issues or objections before the regional board.**

On October 20, 2008 the City advised the regional board that it was filing this petition with the State Board in response to the IO.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The issuance of the IO to the City exceeded the Regional Board’s authority under Water Code Sections 13267 and 13383 for a number of reasons. The primary reason is that both of those provisions authorize the Regional Board to order a “discharger” to submit technical,

1 monitoring, or other reports regarding the discharge, but the IO admits that the City is not a
2 “discharger.” In addition, the Regional Board had no authority to issue the IO under Section
3 13383 because the IO concerns the presence of “fill” in Copper Creek, and the Regional Board is
4 not authorized to implement the federal “dredged or fill” program under section 404 of the Clean
5 Water Act. The IO also is improper under Water Code Section 13267 because it does not seek
6 technical or monitoring information.

7 **II. BACKGROUND**

8 On February 20, 2004, the Regional Board issued the City a Clean Water Act Section 401
9 Water Quality Certification and a waiver of Waste Discharge Requirements (“WDRs”) for the
10 discharge of dredged or fill material related to the construction of the San Elijo Road-County DIP
11 Segment project (“Project”) (Certification No. 03C-067) (IO at p. 1). The Project was authorized
12 under Section 404 of the Clean Water Act by the Army Corps of Engineers (“Corps”) pursuant to
13 Nationwide Permit 14.

14 Pursuant to the Section 401 Certification, the City was required to mitigate the impacts of
15 the “Project” to wetlands and other “waters of the United States” by creating 0.86 acres of
16 wetlands in Copper Creek Canyon. (*Id.*) On behalf of the City, URS, the technical consultant to
17 the San Elijo Hills Development Company (“SEH”), submitted a Final Wetland Mitigation Plan
18 to the Regional Board on March 4, 2004. This plan listed the City as a “responsible party” and
19 SEH as the “Project Coordinator.” (*Id.*) The Project was constructed by SEH beginning in
20 September of 2004, and planting for the Project mitigation in the Copper Creek area was
21 completed by SEH in November of 2004.

22 The IO states that, it was not until more than four years later, on May 7, 2008, that the
23 Regional Board observed a grouted riprap structure within the streambed of Copper Creek that
24 had not been identified in the Final Wetland Mitigation Plan or any other document submitted to
25 the Regional Board. (IO at p. 2). The IO states the Regional Board has not received a report of
26 waste discharge or issued WDRs to any party for the discharge of grouted riprap to Copper
27 Creek, or issued a Section 401 certification for the discharge.

III. LEGAL ARGUMENT

The IO states that it was issued pursuant to California Water Code Sections 13267 and 13383 to direct the City “to submit a technical report” by October 20, 2008, “concerning the discharge of material for the installation of a grouted riprap structure in Copper Creek.” (Letter to Mr. Jerry Backoff from Mr. Michael McCann, Regional Board, September 24, 2008, (“Letter”), Exh. 1 at p. 1). The Letter indicates that the IO is directing the City to submit this “technical” report because, “based on the available information, the City may have provided discretionary approval for the installation of the structure, which would directly conflict with its concurrent committal to the Regional Board to provide compensatory wetland habitat mitigation in the same location.” (*Id.*) The IO does not allege that the City (1) placed the riprap in Copper Creek, (2) is a “discharger” under the Water Code, or (3) or even owned that area of Copper Creek. In fact, in its response to the regional board’s September 24, 2008 IO issued to San Elijo Hills Development Company (“SEH”), SEH acknowledged that they placed the subject riprap in Copper Creek under a Section 404 permit issued to SEH in 1998. Further, at the time of the discharge in the present case, the relevant section of Copper Creek was owned by SEH, and now is owned by SEH and the San Elijo Hills Community Association. (IO at p. 3). These facts make the Regional Board’s issuance of the IO an improper exercise of its authority under the Water Code.

A. Water Code Section 13383 Does Not Authorize the IO.

Water Code Section 13383 authorizes the Regional Board to establish “monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 ... for any person who discharges, or proposes to discharge, to navigable waters” (Water Code Section 13383(a)). Section 13383 is in Chapter 5.5 of the Water Code, which is titled “Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972.” That chapter was enacted by the state legislature to allow the state to implement the federal Clean Water Act. Consequently, Section 13383 authorizes the Regional Board to “establish requirements” related to permits required under the Clean Water Act. This is critical to understanding why the Regional Board’s claim that it has authority under this section to order the

1 City to submit the requested information is misplaced.

2 Section 13383 refers to “requirements” that can be imposed as authorized by Sections
3 13160, 13376 and 13377. Section 13160 simply designates the State Board as the water pollution
4 control agency for implementing the federal Clean Water Act. Section 13376 generally prohibits
5 persons from discharging “pollutants” or “dredged or fill” material to “navigable waters of the
6 United States” without a permit. The reference to discharging “pollutants” corresponds with the
7 federal National Pollutant Discharge Elimination System (“NPDES”) implemented by the United
8 States Environmental Protection Agency (“EPA”) under Section 402 of the Clean Water Act,
9 while the reference to discharging “dredged or fill material” corresponds to the federal permit
10 program implemented by the Army Corps of Engineers (“Corps”) under Section 404 of the Clean
11 Water Act. Water Code Section 13377 concerns only the issuance of “dredged or fill” permits
12 under Section 404 of the Clean Water Act.

13 The distinction between the Section 402 NPDES program and the Section 404 fill
14 program is important because Water Code Section 13372(b) explicitly states that “the provisions
15 of this chapter relating to the issuance of dredged or fill material permits by the state board or a
16 regional board shall be applicable only to discharges for which the state has an approved permit
17 program, in accordance with the provisions of the Federal Water Pollution Control Act, as
18 amended, for the discharge of dredged or fill material.” The State of California does not have an
19 approved Section 404 permit program under the Clean Water Act. Consequently, the Regional
20 Board cannot impose “requirements” related to Sections 13376 and 13377 related to fill activities
21 because the Corps, not the Regional Board, implements that permit program.

22 If the activity in Copper Creek required a permit under the Clean Water Act, that permit
23 would be a Section 404 “fill” permit because that program “focuses exclusively on two materials:
24 dredged material and fill material. The term ‘fill material’ clearly contemplates material that fills
25 in a water body, and thereby converts it to dry land or changes the bottom elevation,” while
26 “[t]here are no statutory or regulatory provisions under the section 402 program designed to
27 address discharges that convert waters of the U.S. to dry land.” 65 Fed. Reg. 21292, 21293
-- (April 20, 2000). Similarly, EPA’s rules state that “discharges of dredged or fill material into

1 waters of the United States” that are regulated under Section 404 are not required to obtain an
2 NPDES permit. 40 C.F.R. § 122.3(b). Because the Regional Board does not have authority to
3 implement the Section 404 program, it did not have authority under Section 13383 to issue the
4 IO.

5 The Regional Board also exceeded its authority because Section 13383 only authorizes
6 the imposition of “requirements” on “any person who discharges, or proposes to discharge, to
7 navigable waters.” The IO does not allege that the City discharged or proposed to discharge
8 material into a navigable water, and the Regional Board admits that it has asserted jurisdiction
9 under Section 13383 based solely on the claim that “the City may have provided discretionary
10 approval for the installation of this structure.” (Letter at p. 1). Because the City did not
11 “discharge” fill material, Section 13383 is inapplicable.

12 Finally, Section 13383 lists a series of “requirements” that the Regional Board can impose
13 on a discharger. None of those “requirements” authorize the Regional Board to order the
14 production of the type of information requested from the City in the IO.¹

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16
17 ¹ The IO (*see* pgs. 3-4) requires a “technical” report that provides the following information:

18 1. The date when the City was notified of a proposal to place a grade control or other
19 permanent structure similar to the current structure in Copper Creek (“Structure”).

20 2. A list of discretionary approvals that were granted for the Structure, and information
21 on “the applicant, type and dimensions of facility, dates of approval, any conditions of approval,
etc.”

22 3. Information on inspections by the City “to verify compliance with the discretionary
23 approval(s) granted” for the Structure.

24 4. The California Environmental Quality Act document reviewed for placement of the
25 Structure.

26 5. Information on City inspections “to verify compliance with the habitat mitigation
conditions of 401 Certification 03C-067.”

27 6. A description of the roles and responsibilities of SEH and the San Elijo Hills
Community Association for development of the City’s conceptual and final wetland mitigation
plans.

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California Regional Water Quality Control Board San Diego Region

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 24, 2008

In reply refer to:
CAU:jcofran
Place ID: 725271

Mr. Jerry Backoff
City of San Marcos, Development Services Department
1 Civic Center Drive
San Marcos, CA 92069

CERTIFIED MAIL
Registration Number
7007 1490 0003 8753 5681

Dear Mr. Backoff:

INVESTIGATIVE ORDER NO. R9-2008-0118, DISCHARGE OF MATERIAL INTO UPPER COPPER CREEK, SAN MARCOS, CALIFORNIA

Enclosed is Investigative Order No. R9-2008-0118 (Order) of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning the discharge of material for the installation of a grouted riprap structure in Copper Creek.

The Order is issued pursuant to California Water Code (CWC) Sections 13267 and 13383 and directs the City of San Marcos to submit a technical report by **October 20, 2008** that provides information about the discharge and structure. Pursuant to CWC Section 13268, a violation of a CWC Section 13267 requirement may subject the City to civil liability of up to \$1,000 per day for each day in which the violation occurs. Pursuant to CWC Section 13385, a violation of a CWC Section 13383 requirement may subject the City to civil liability of up to \$10,000 per day for each day in which the violation occurs.

The City is being directed to provide the technical report because, based on the available information, the City may have provided discretionary approval for the installation of the structure, which would directly conflict with its concurrent committal to the Regional Board to provide compensatory wetland habitat mitigation in the same location. Evidence supporting the basis for the Order is noted within the Order, including an inspection by Regional Board staff and information provided by the City regarding Clean Water Act Section 401 Water Quality Certification 03C-067. More detailed information is available in the Regional Board's public file on this matter.

September 24, 2008

Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Board, Office of Chief Counsel, P.O. Box 100 Sacramento, 95812 within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

Any person affected by this action of the Regional Board may request an evidentiary hearing before the Regional Board. The Regional Boards' Executive Officer may elect to hold an informal hearing or a paper hearing in lieu of scheduling a hearing before the Board itself. If you decide to request an evidentiary hearing, send your request to Michael McCann attention Jeremy Haas. Please consider the following carefully:

1. The San Diego Water Board must receive your request within 30 days of the date of this Final Order.
2. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Regional Board has previously received regarding this site. You are not required to submit documents that are already in the record.
3. The Executive Officer or San Diego Water Board may deny your request for a hearing after reviewing the evidence.
4. If you do not request an evidentiary hearing, the State Water Board may prevent you from submitting new evidence in support of a State Water Board petition.
5. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Final Order, whether or not a hearing is scheduled.
6. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board. However, we suggest that you ask the State Water Board to hold the petition in abeyance while your request for a hearing is pending. (See, 23 Cal. Code of Regs. § 2050.5(d).) The Final Order includes additional information about State Water Board petitions."

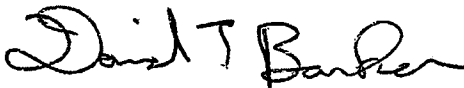
Mr. Backoff
City of San Marcos
Investigative Order No. R9-2008-0118

- 3 -

September 24, 2008

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter. If you have any questions regarding this letter, please contact Mrs. Joann Cofrancesco at 858-637-5589 or jcofrancesco@waterboards.ca.gov.

Respectfully,



 MICHAEL P. McCANN
Assistant Executive Officer

MPM:ma:jh:jlc

Enclosure: Investigative Order No. R9-2008-0118

cc (by email):

Jeff O'Connor, Director of Operations, San Elijo Hills Development Company, LLC,
joconnor@hfc-ca.com

John Lormon, Procopio, Cory, Hargreaves & Savitch LLP

Mayumi Okamoto, State Water Board, Office of Enforcement, mokamoto@waterboards.ca.gov

San Elijo Hills Community Association, jsalvia@waltersmanagement.com

Tamara Spear, California Dept. of Fish and Game, TSpear@dfg.ca.gov

Chiara Clemente, San Diego Regional Water Board cclemente@waterboards.ca.gov

Robert Smith, U.S. Army Corps of Engineers, San Diego Field Office,
robert.r.smith@usace.army.mil

Bill Orme, State Water Board, Section 401 Program, bome@waterboards.ca.gov

California Environmental Protection Agency

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**INVESTIGATIVE ORDER NO. R9-2008-0118
FOR**

**CITY OF SAN MARCOS
DISCHARGE OF MATERIAL INTO UPPER COPPER CREEK,
SAN MARCOS, SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. California Water Code (CWC) Sections 13267(b) and 13383 contain criteria that allow the Regional Board to conduct investigations and to establish technical, monitoring, inspection, entry, reporting, and record keeping requirements from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge. Pursuant to CWC Section 13267, this Regional Board may investigate the quality of waters of the state by requiring dischargers to submit technical or monitoring reports.
2. On February 20, 2004, the Regional Board issued the City of San Marcos (hereinafter City) a Clean Water Act Section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials for the San Elijo Road – County Dip Segment Project (Certification 03C-067). Pursuant to §401 Certification 03C-067, the City would mitigate permanent degradation of 0.30 acres of herbaceous wetland and un-vegetated waters of the U.S through the creation of 0.86 acres of wetlands in Copper Creek.
 - a. According to the conceptual mitigation plan submitted to support the §401 Certification application, a continuous wetland corridor would be created adjacent to an existing downstream mitigation area. (*Draft Jurisdictional Delineation and Biological Assessment, County Dip Segment of San Elijo Road*, Prepared for City of San Marcos, URS Project No.27644265.05050, April 4, 2003, received by the Regional Board on June 2, 2003)
 - b. Pursuant to Mitigation Condition 11 of §401 Certification 03C-067, a final mitigation plan was submitted to the Regional Board on March 4, 2004 (*Wetland Mitigation Plan – San Elijo Road, County Dip Portion* (URS Corporation, March 2, 2004).
 - c. In the final *Wetland Mitigation Plan*, the City of San Marcos is listed as the Responsible Party and San Elijo Hills Development Company is listed as the Project Coordinator.

3. On May 7, 2008, Regional Board inspectors observed a grouted riprap structure within the streambed of the proposed mitigation area in Copper Creek. This riprap structure was not included in the *Wetland Mitigation Plan* or other plans submitted as part of the City's Certification application or requirements. Mitigation monitoring plans subsequently submitted by the City on June 9, 2008 identify the location of the riprap structure relative to the March 2, 2004 Wetland Mitigation Plan submitted pursuant to Certification 03C-067 (Attachment 1).
4. The location of the riprap structure within Copper Creek is south of San Elijo Road, between Hope Street and Questhaven Road, San Marcos, California 92078 (approximate latitude/longitude is 33.101580 North and -117.190340 West).
5. The Regional Board has not received a report of waste discharge pursuant to CWC Section 13260 or issued waste discharge requirements¹ to any party for the discharge of grouted riprap to the affected portion of Copper Creek.
6. Discharge of grouted riprap to the affected portion of Copper Creek, without coverage under a waiver or waste discharge requirements, may constitute the initiation of a discharge under CWC Section 13264. If the Regional Water Board finds that a discharge has in fact been initiated, then enforcement actions pursuant to CWC Section 13265² could be pursued.
7. The Regional Board has not issued a Clean Water Act Section 401 Water Quality Certification³ to any party for the discharge of grouted riprap to the affected portion of Copper Creek.
8. The Basin Plan designates the following beneficial uses to the affected portion of Copper Creek (HA 904.5): agricultural supply, contact and non-contact water recreation, and warm freshwater and wildlife habitat.

¹ CWC Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, file a report of waste discharge (ROWD). The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State. CWC Section 13263(a) requires that waste discharge requirements (WDRs) be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge.

² CWC Section 13265 provides that "Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

³ Clean Water Act Section 401 requires any applicant for a Federal license or permit to conduct any activity which may result in any discharge into the navigable waters, to provide the licensing or permitting agency a certification from the State water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with water quality standards and implementation plans. The fundamental requirement of a Regional Board Certification Order is that it describes the discharge, proposed mitigation, and any conditions in adequate detail to protect beneficial uses and allow effective enforcement if necessary.

9. The permanent discharge of grouted riprap to Copper Creek degrades the beneficial uses by eliminating substrate and vegetation essential to supporting wildlife and certain recreational uses. In addition the structure is inconsistent with the habitat mitigation plan approved as a condition of §401 Certification 03C-067. The structure prevents attainment of the mitigation plan's objectives by eliminating the wetland connectivity to downstream wetland habitats proposed in the habitat mitigation plan.
10. The San Elijo Hills Development Company applied for coverage under the State Water Resources Control Board Order 99-08-DWQ, NPDES General Permit No. CAS000002, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*, to perform construction activities in the vicinity of Copper Creek and was issued WDID 937S309763.
11. The City has reported to the Regional Board that San Elijo Hills Development Company was the property owner of the affected portion of Copper Creek at the time that the City's mitigation installation occurred.
12. The City has reported to the Regional Board that San Elijo Hills Development Company and the San Elijo Hills Community Association are the present owners of the affected portion of Copper Creek.

IT IS HEREBY ORDERED, that pursuant to Sections 13267 and 13383 of the California Water Code, the City of San Marcos shall conduct a technical investigation, and prepare and submit the following technical report to the Regional Board:

The technical report shall contain, but is not limited to, the following information, and shall be submitted no later than **October 20, 2008**.

1. Discharge of Riprap within Copper Creek:

- a. Identify the date when the City was notified of a proposal to place a grade control or other permanent structure similar to the current structure in Copper Creek.
- b. Provide a list of discretionary approvals that were granted to San Elijo Hills Development Company (or their predecessor or contractor) for the placement of a grade control or other permanent structure in Copper Creek. Provide the pertinent information regarding the approval, including, but not limited to, the applicant, type and dimensions of facility, dates of approval, any conditions of approval, etc.
- c. Identify the dates of the inspections and the person who conducted the inspections to verify compliance with the discretionary approval(s) granted for the placement of a grade control or other permanent structure in Copper Creek. Provide a summary of the results, including, but not limited to, any violations or enforcement actions.

- d. Identify the California Environmental Quality Act (CEQA) document reviewed for the placement of a grade control or other permanent structure in Copper Creek.

2. Wetland Mitigation Plan

- a. Identify the dates of the inspections or reconnaissance by the City and the person who conducted the inspection or reconnaissance to verify compliance with the habitat mitigation conditions of 401 Certification 03C-067. Provide the dates, results, and suggested corrective measures.
- b. Describe the roles and responsibilities of the San Elijo Hills Development Company (including predecessors or successors as applicable) and San Elijo Hills Community Association for development of the City's conceptual and final wetland mitigation plans.

3. Signatory Requirements

All reports required under this Order shall be signed and certified by either a principal executive officer or ranking elected official or the person with overall responsibility for environmental matters for that municipality. Any person signing a document under this provision shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Notifications

- a. Requirements established pursuant to CWC Sections 13267(b) or 13383 are enforceable when signed by the Executive Officer or Assistant Executive of the Regional Board.
- b. Pursuant to CWC Section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by CWC Section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- c. Pursuant to CWC Section 13385, a violation of a requirements established pursuant to CWC Section 13383 may subject you to civil liability of up to \$10,000 per day for each day in which the violation occurs.

- d. CEQA Compliance. This enforcement action is being taken for the protection of the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with section 15308, Chapter 3, Title 14 of the California Code of Regulations. The issuance of this Order is also an enforcement action taken by a regulatory agency and is exempt from the provisions of CEQA pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.



09/24/2008

Date

For

MICHAEL P. McCANN
Assistant Executive Officer

Attachment: Figure 1. Location of Riprap Structure

CIWQS Entries:
Reg Msr: 351358
Place ID: 725271
Party ID: 369584

Figure 1. Vicinity of Copper Creek Location

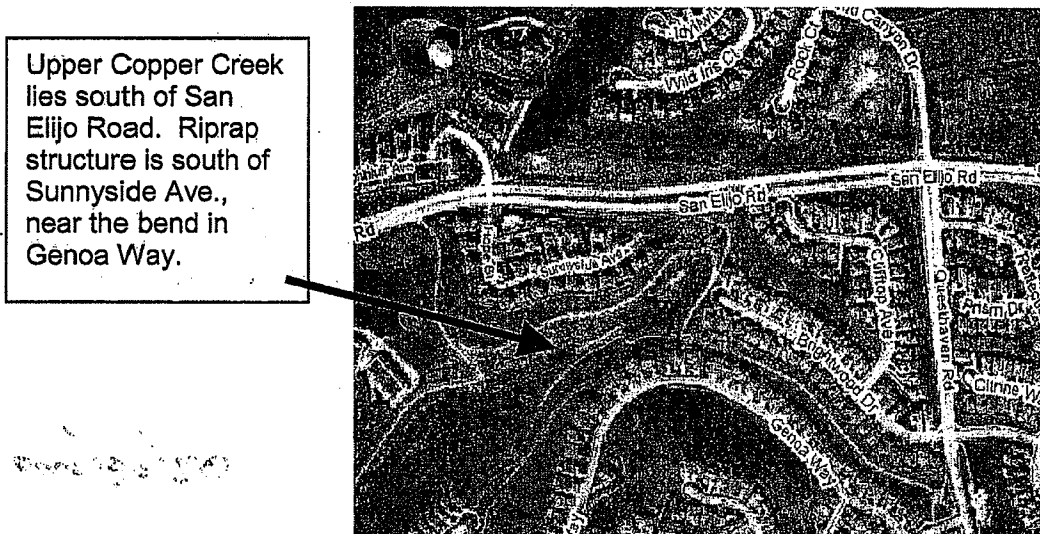


Figure 2. Location of Grouted Riprap Structure as Depicted in City of San Marcos Mitigation Monitoring Report (Report Year 2005, Wetland Mitigation and Monitoring, First Year Report for San Elijo Road, County Dip Portion, Prepared for City of San Marcos, URS Project No. 27655006.02000, January 2006).

